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TO:**Name:** Mail Stop APPEAL BRIEF-Patents
Group Art Unit 3771
Examiner Danton D. DeMille**Firm:** U.S. Patent & Trademark Office**Fax No.:** 571-273-8300**Subject:** U.S. Patent Application No. 08/354,450
Gary Karlin Michelson

Filed: December 12, 1994

DEVICE FOR ARTHROSCOPIC MENISCAL
REPAIR

Attorney Docket No. 101.0023-04000

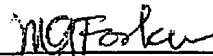
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FROM:**Name:** Amedeo F. Ferraro, Esq.**Phone No.:** 310-286-9800**No. of Pages (including this):** 16**Date:** April 21, 2008**Confirmation Copy to Follow:** NO

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FORM PTO-1083

APR 21 2008

Attorney Docket No.: 101.0023-04000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary K. Michelson

Serial No: 08/354,450

Filed: December 12, 1994

For: DEVICE FOR ARTHROSCOPIC
MENISCAL REPAIR

Confirmation No.: 3041

Art Unit: 3771

Examiner: Danton D. DeMille

Mail Stop APPEAL BRIEF-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is a Reply Brief in response to the Examiner's Answer dated February 19, 2008 in the above-identified application.

- ☒ No additional fee is required.
- ☐ Applicant hereby requests a ***-month extension of time to respond to the above office action.
- ☐ The total amount of \$***.00 to cover the *** -month extension fee is to be charged to Deposit Account No. 50-1066.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1066.
- A copy of this sheet is enclosed.**
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,
MARTIN & FERRARO, LLP

Date: April 21, 2008

By: Amadeo F. Ferraro
Registration No. 37,1291557 Lake O'Pines Street, NE
Hartville, Ohio 44632
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Transmittal 4-21-08

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FORM PTO-1083

Attorney Docket No.: 101.0023-04000

Customer No. 22882

APR 21 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary K. Michelson

Serial No: 08/354,450

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Respectfully submitted,

MARTIN & FERRARO, LLP

Date: April 21, 2008

By: 

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PATENT
Attorney Docket No. 101.0023-04000
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APR 21 2008

APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)	Confirmation No. 3041
Gary Karlin Michelson)	
Serial No.: 08/354,450)	Group Art Unit: 3771
Filed: December 12, 1994)	Examiner: Danton D. DeMille
For: DEVICE FOR ARTHROSCOPIC)	
MENISCAL REPAIR)	

Mail Stop APPEAL BRIEF-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF

Appellant submits the following Reply Brief in response to the Examiner's Answer dated February 19, 2008 (the "February 2008 Examiner's Answer"). The following remarks are submitted for consideration by the Board of Patent Appeals and Interferences.

I. Remarks in response to the February 2008 Examiner's Answer.

Appellant notes that the remarks of the February 2008 Supplemental Examiner's Answer and the remarks of the Supplemental Examiner's Answer mailed on December 1, 2005 are substantially identical except for the changes to the headings on page 2 and the remarks beginning on page 7, line 11 through page 12, line 11. Accordingly, Appellant incorporates herein the remarks from Appellant's Supplemental Reply Brief dated February 1, 2006 and Reply Brief dated September 1, 2005 in their entirety as a complete response to the Examiner's remarks contained in the February 2008 Supplemental Examiner's Answer. The changed portions of the February 2008 Supplemental Examiner's Answer are addressed below.

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II. The Examiner's Answer Fails to Comply with All of the Requirements in the Board's Remand to The Examiner

In the Remand to the Examiner decided November 17, 2007 (the "Remand"), the Board stated that the "Examiner is unclear what weight to give the purported new matter, and does not state how the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph" and that the "Examiner needs to explicitly address each claim and explain why the claim does not meet the requirements of 35 U.S.C. § 112, second paragraph." (Remand, page 4, lines 18-26.) To support the rejections under 35 U.S.C. § 112, second paragraph, the Examiner repeats verbatim the arguments made in the rejection under 35 U.S.C. § 112, first paragraph, and simply adds the phrase "so it is not clear how much weight to give this language" after each argument. Appellant submits that the mere repetition of an argument directed to lack of support with a question of how much weight to give this language is not sufficient grounds to support a rejection for indefiniteness under 35 U.S.C. § 112, second paragraph. To interpret otherwise would render every rejection under the first paragraph a rejection also under the second paragraph of 35 U.S.C. § 112. Such an interpretation would obviate the need for the second paragraph of 35 U.S.C. § 112.

For these reasons and the reasons set forth below, Appellant respectfully submits that the Examiner's Answer does not comply with this requirement of the Remand. Accordingly, Appellant respectfully submits that the Examiner has failed to meet his burden to set forth a prima facie case of unpatentability under 35 U.S.C. § 112, second paragraph.

III. Rejections under 35 U.S.C. § 112, first paragraph

In the February 2008 Examiner's Answer, the Examiner rejected claims 29-175, 183-185, 211-241, 245-247, 274, 275, 284, 285, 293-300 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner indicated that "the claim(s) contains (sic) subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." (February 2008 Examiner's Answer, page 7, lines 11-16.)

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Appellant notes that the Examiner has withdrawn the rejections of claims 176-182, 186-210, 242-244, 248-273, 276-283, and 286-292 under 35 U.S.C. § 112, first paragraph.

A. Claims 29, 60, and 100

The Examiner stated that "[r]egarding a) claims 29, 100 recite 'said flexible member being at least in part curved.' Claim 60 recites 'said flexible member being at least in part concave.' This language would appear to require the flexible member to be at least partly concave or curved. There appears to be no support in the written description as originally disclosed for the flexible member to be at least partially concave or curved." (February 2008 Examiner's Answer page 7, line 21 to page 8, line 3.)

Appellant discloses that the flexible member is flexible "so as to be able to conform to the angle of the meniscus M," and "deform so as to conform to the surface of the meniscus." (Specification, page 6, lines 31-33; and page 7, lines 30-31.) It is well known to those skilled in the art of orthopedic surgery that the surface of the meniscus is curved. (See, e.g., Anatomy of the Human Body, Gray Henry, 20th ed., Fig. 349 (1918), a copy of which is attached as Exhibit A to the Appeal Brief dated April 20, 2005.) The surgeon installs the rivet of the present invention by inserting the shaft into the tissue of the torn meniscus. After the rivet is fully deployed, the shaft will have penetrated the portions of the meniscus tissue being repaired and the flexible member will be in contact with surface of meniscus. When the flexible member contacts the surface of the meniscus, due to the curvature of the meniscus, the forces between the underside of the flexible member and the tissue of the meniscus cause at least a portion of the perimeter of the flexible member to flex away from the shaft. As a result, at least a portion of the perimeter is elevated relative to the middle of the flexible member overlying the shaft, which is held in place by the shaft. This deformation of the flexible member forms a curve to conform to the curve of the top surface of the meniscus into which the flexible member is inserted. As a result of the deformation, the top surface of the flexible member can become curved to create a concavity in the top surface of the flexible member. Accordingly, Appellant submits that the disclosure

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readily allows one of ordinary skill in the art to perceive that the flexible member is "at least in part curved" when in contact with the tissue of the meniscus.

Appellant further submits that the flexible member being at least in part curved when in contact with the tissue is inherently supported in the specification and drawings of Appellant's disclosure as originally filed. According to the MPEP, "[b]y disclosing in a patent application a device that inherently performs a function or has a property, operates according to a theory or has an advantage, a patent application *necessarily* discloses that function, theory or advantage, even though it says nothing explicit concerning it." (MPEP § 2163.07(a), page 2100-192, col. 2 (Sep 2007)) (emphasis added). Accordingly, Appellant submits that the Examiner's objection to the subject matter identified in sub-ground a) as lacking support has been overcome.

B. Claims 33, 105, 148, 183, 214, and 245

The Examiner stated that "[r]egarding b) claims 33, 105, 148, 183, 245 recite 'said flexible member is deformable to have an at least in part concave shape.' Claim 214 recites 'said top of said member is deformable to have an at least in part concave shape.' Here 'said member' is the 'flexible member' and the top of the flexible member would also apply her (sic) as well. This language would appear to require the flexible member to be at least partly concave or curved. There appears to be no support in the written description as originally disclosed for the flexible member to be at least partially concave or curved." (February 2008 Examiner's Answer page 8, lines 4 to 10.)

The remarks under item III.A. of the argument above are incorporated by reference herein. Further, as a result of the deformation of the flexible member against the surface of the meniscus, the top surface of the flexible member becomes curved to create a concavity in the top surface of the flexible member. Accordingly, Appellant submits that the disclosure readily allows one of ordinary skill in the art to perceive that the flexible member has a top surface with a shape that is "at least in part concave" when in contact with the tissue of the meniscus.

Appellant further submits that the flexible member being deformable to have an at least in part concave shape when in contact with the tissue is inherently supported in the specification and drawings of Appellant's disclosure as originally filed. Accordingly,

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Appellant submits that the Examiner's objection to the subject matter identified in sub-ground b) as lacking support has been overcome.

C. Claims 34, 65, 106, 149, 184, 215, and 246

The Examiner stated that "[r]egarding c) claims 34, 65, 106, 149, 184, 215, 246 recite 'said flexible member has a greater surface area to mass ratio than said shaft.' There appears to be no support in the written description as originally disclosed for the flexible member to have a greater surface area to mass ratio than the shaft." (February 2008 Examiner's Answer page 8, lines 11 to 14.)

The flexible member having a greater surface area to mass ratio than that of the shaft is supported in the original disclosure at least, for example, in Fig. 4. (See Fig. 4, Exhibit B attached to the Appeal Brief dated April 20, 2005.) The figures can provide support for the claimed invention to satisfy the written description requirement of 35 U.S.C. § 112, first paragraph. MPEP § 2163(II)(A)(3)(a) states that "[a]n applicant may show possession of an invention by disclosure of drawings or structural chemical formulas that are sufficiently detailed to show that Appellant was in possession of the claimed invention as a whole. See, e.g., *Vas-Cath*, [citation omitted], ("drawings alone may provide a 'written description' of an invention as required by sec. 112"); *In re Wolfensperger*, [citation omitted], (the drawings of Appellant's specification provided sufficient written descriptive support for the claim limitation at issue); *Autogiro Co. of America v. United States*, [citation omitted], ("In those instances where a visual representation can flesh out words, drawings may be used in the same manner with the same limitations as the specification.")" (MPEP § 2163(II)(A)(3)(a), page 2100-178, col. 1 to page 2100-179, col. 1 (Sep 2007).)

As shown in Fig. 4, the flexible member has a greater surface area to mass ratio than the shaft. To facilitate the Board's understanding of the difference in the surface area to mass ratios, Appellant measured the dimensions of the rivet in Fig. 4 and used these dimensions to calculate their respective ratios. (See Fig. 4, and calculations on page 2 of Exhibit B). In Fig. 4, the surface area to mass ratio of the flexible member is 0.54. The surface area to mass ratio of the shaft is 0.34. Appellant's calculations show, with mathematical certainty, that the flexible member has a greater surface area

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to mass ratio than the shaft. Accordingly, Appellant submits that the disclosure as originally filed supports the relationship set forth in sub-ground c).

D. Claims 35, 66, 107, 150, 185, 216, and 247

The Examiner stated that "[r]egarding d) claims 35, 66, 107, 150, 185, 216, 247 recite 'said flexible member has a smaller mass than the mass of said shaft.' There appears to be no support in the written description as originally disclosed for the flexible member to have a smaller mass than the mass of the shaft." (February 2008 Examiner's Answer page 8, lines 15 to 18.)

The remarks under item III.C. of the argument above are incorporated by reference herein. Further, as the flexible member and shaft are made of the same material, it is clear from Fig. 4 that the mass of the flexible member is less than the mass of the shaft. (See Fig. 4, Exhibit B.) Accordingly, Appellant submits that the disclosure as originally filed supports the relationship set forth in sub-ground d).

E. Claim 145

The Examiner stated that "[r]egarding e) claim 145 recites 'at least a second portion of said bottom of said flexible member forms an included angle relative to the mid-longitudinal axis of said shaft that is less than 90 degrees.' This language would appear to require at least a portion of the flexible member to be formed at an acute angle of the longitudinal axis of the shaft. There appears to be no support in the written description as originally disclosed for the flexible member to be formed at an acute angle to the shaft." (February 2008 Examiner's Answer page 8, line 19 to page 9, line 3.)

Appellant respectfully disagrees with the Examiner's contention that the original disclosure does not support a second portion of the bottom of the flexible member forming an included angle relative to the mid-longitudinal axis of the shaft that is less than 90 degrees. An "included angle" is defined as an angle "between or within" two sides. (Meriam Webster's Collegiate Dictionary, 10th ed., page 588, col. 1 (1999); Exhibit C attached to the Appeal Brief dated April 20, 2005.) Appellant discloses in Fig. 7 an included angle between the bottom of the flexible member and the mid-longitudinal axis of the shaft that is less than 90 degrees. (See angle A as labeled in

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Fig. 7, Exhibit D attached to the Appeal Brief dated April 20, 2005.) Accordingly, Appellant submits that the disclosure as originally filed supports the angular relationship set forth in sub-ground e).

F. Claims 211, 275, 285, and 293

The Examiner stated that "[r]egarding f) claim (sic) 211, 293 recites 'at least a first portion of said bottom adjacent to said outer perimeter being at an acute angle relative to the mid-longitudinal axis of said shaft.' Claim (sic) 275, 285 recites 'the member forms an included angle relative to the mid-longitudinal axis of the shaft of said rivet that is less than 90 degrees.' This language would appear to require at least a portion of the flexible member to be formed at an acute angle of the longitudinal axis of the shaft. There appears to be no support in the written description as originally disclosed for the flexible member to be formed at an acute angle to the shaft." (February 2008 Examiner's Answer page 9, lines 4 to 10.)

The bottom of the flexible member having a first portion adjacent the perimeter being at an acute angle relative to the mid-longitudinal axis of the shaft is supported in the original disclosure at least, for example, in Fig. 7. (See Exhibit D.) As shown in Fig. 7, there is an acute angle (angle A in Exhibit D) between a first part of the bottom of the flexible member adjacent the outer perimeter and the mid-longitudinal axis of the shaft. Accordingly, Appellant submits that the disclosure as originally filed supports the angular relationship set forth in sub-ground f).

G. Claims 144, 211, 274, 284, and 293

The Examiner stated that "[r]egarding g) claim (sic) 211, 293 recites 'at least a second portion of said bottom adjacent to said outer perimeter being at an obtuse angle relative to the mid-longitudinal axis of said shaft.' Claim 144 recites 'at least a portion of said bottom forming an included angle relative to the mid-longitudinal axis of said shaft that is greater than 90 degrees.' Claim (sic) 274, 284 recites 'the member forms an included angle relative to the mid-longitudinal axis of the shaft of said rivet that is greater than 90 degrees.' This language would appear to require at least a portion of the flexible member to be formed at an acute angle of the longitudinal axis of the shaft. There appears to be no support in the written description as originally disclosed for the

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flexible member to be formed at an acute angle to the shaft." (February 2008 Examiner's Answer page 9, lines 11 to 19.)

The bottom of the flexible member having a second portion adjacent the perimeter being at an obtuse angle relative to the mid-longitudinal axis of the shaft is supported in the original disclosure at least, for example, in Fig. 7. (See Exhibit D.) As shown in Fig. 7, there is an obtuse angle (angle B in Exhibit D) between a second part of the bottom of the flexible member adjacent the outer perimeter and the mid-longitudinal axis of the shaft. Accordingly, Appellant submits that the disclosure as originally filed supports the angular relationship set forth in sub-ground g).

IV. Rejections under 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 29-175, 183-185, 211-241, 245-247, 274, 275, 284, 285, and 293-300 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (February 2008 Examiner's Answer, page 10, lines 1-11.)

Appellant notes that the Examiner has withdrawn the rejections of claims 176-182, 186-210, 242-244, 248-273, 276-283, and 286-292 under 35 U.S.C. § 112, second paragraph.

The Examiner stated that "[i]t is not clear what the metes and bounds of the claims are since the claim language noted above has no clear support in the specification as originally filed." (February 2008 Examiner's Answer page 10, lines 4-5.)

35 U.S.C. § 112, states that "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." Appellant submits that the Examiner has once again failed to state "how the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph." (Remand, page 4, lines 20-21.) The Examiner has merely repeated verbatim the grounds for the 35 U.S.C. § 112, first paragraph, rejection and stated that the Examiner is unclear what weight to give the language. Applicant submits that the Examiner has not met his burden to set forth a prima facie case of unpatentability under 35 U.S.C. § 112, second paragraph.

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A. Claims 29, 60, and 100

The Examiner stated that "[r]egarding a) claims 29, 100 recite 'said flexible member being at least in part curved.' Claim 60 recites 'said flexible member being at least in part concave.' This language would appear to require the flexible member to be at least partly concave or curved. There appears to be no support in the written description as originally disclosed for the flexible member to be at least partially concave or curved **so it is not clear how much weight to give this language.**" (February 2008 Examiner's Answer page 10, lines 9 to 13, emphasis added.)

Appellant incorporates the remarks in III.A. above showing there is support in the specification for the rejected claims. Appellant further submits that other than stating "it is not clear how much weight to give this language," the Examiner has not explained why the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, Appellant respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 112, second paragraph.

B. Claims 33, 105, 148, 183, 214, and 245

The Examiner stated that "[r]egarding b) claims 33, 105, 148, 183, 245 recite 'said flexible member is deformable to have an at least in part concave shape.' Claim 214 recites 'said top of said member is deformable to have an at least in part concave shape.' Here 'said member' is the 'flexible member' and the top of the flexible member would also apply her (sic) as well. This language would appear to require the flexible member to be at least partly concave or curved. There appears to be no support in the written description as originally disclosed for the flexible member to be at least partially concave or curved **so it is not clear how much weight to give this language.**" (February 2008 Examiner's Answer page 10, lines 14 to 20, emphasis added.)

Appellant incorporates the remarks in III.B. above showing there is support in the specification for the rejected claims. Appellant further submits that other than stating "it is not clear how much weight to give this language," the Examiner has not explained why the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, Appellant respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 112, second paragraph.

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C. Claims 34, 65, 106, 149, 184, 215, and 246

The Examiner stated that "[r]egarding c) claims 34, 65, 106, 149, 184, 215, 246 recite 'said flexible member has a greater surface area to mass ratio than said shaft.' There appears to be no support in the written description as originally disclosed for the flexible member to have a greater surface area to mass ratio than the shaft **so it is not clear how much weight to give this language.**" (February 2008 Examiner's Answer page 11, lines 1 to 4, emphasis added.)

Appellant incorporates the remarks in III.C. above showing there is support in the specification for the rejected claims. Appellant further submits that other than stating "it is not clear how much weight to give this language," the Examiner has not explained why the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, Appellant respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 112, second paragraph.

D. Claims 35, 66, 107, 150, 185, 216, and 247

The Examiner stated that "[r]egarding d) claims 35, 66, 107, 150, 185, 216, 247 recite 'said flexible member has a smaller mass than the mass of said shaft.' There appears to be no support in the written description as originally disclosed for the flexible member to have a smaller mass than the mass of the shaft **so it is not clear how much weight to give this language.**" (February 2008 Examiner's Answer page 11, lines 5 to 8, emphasis added.)

Appellant incorporates the remarks in III.D. above showing there is support in the specification for the rejected claims. Appellant further submits that other than stating "it is not clear how much weight to give this language," the Examiner has not explained why the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, Appellant respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 112, second paragraph.

E. Claim 145

The Examiner stated that "[r]egarding e) claim 145 recites 'at least a second portion of said bottom of said flexible member forms an included angle relative to the mid-longitudinal axis of said shaft that is less than 90 degrees.' This language would

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appear to require at least a portion of the flexible member to be formed at an acute angle of the longitudinal axis of the shaft. There appears to be no support in the written description as originally disclosed for the flexible member to be formed at an acute angle to the shaft **so it is not clear how much weight to give this language.**"

(February 2008 Examiner's Answer page 11, lines 9 to 14, emphasis added.)

Appellant incorporates the remarks in III.E. above showing there is support in the specification for the rejected claims. Appellant further submits that other than stating "it is not clear how much weight to give this language," the Examiner has not explained why the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, Appellant respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 112, second paragraph.

F. Claims 211, 275, 285, and 293

The Examiner stated that "[r]egarding f) claim (sic) 211, 293 recites 'at least a first portion of said bottom adjacent to said outer perimeter being at an acute angle relative to the mid-longitudinal axis of said shaft.' Claim (sic) 275, 285 recites 'the member forms an included angle relative to the mid-longitudinal axis of the shaft of said rivet that is less than 90 degrees.' This language would appear to require at least a portion of the flexible member to be formed at an acute angle of the longitudinal axis of the shaft. There appears to be no support in the written description as originally disclosed for the flexible member to be formed at an acute angle to the shaft **so it is not clear how much weight to give this language.**" (February 2008 Examiner's Answer page 11, lines 15 to 22, emphasis added.)

Appellant incorporates the remarks in III.F. above showing there is support in the specification for the rejected claims. Appellant further submits that other than stating "it is not clear how much weight to give this language," the Examiner has not explained why the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, Appellant respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 112, second paragraph.

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G. Claims 144, 211, 274, 284, and 293

The Examiner stated that "[r]egarding g) claim (sic) 211, 293 recites 'at least a second portion of said bottom adjacent to said outer perimeter being at an obtuse angle relative to the mid-longitudinal axis of said shaft.' Claim 144 recites 'at least a portion of said bottom forming an included angle relative to the mid-longitudinal axis of said shaft that is greater than 90 degrees.' Claim (sic) 274, 284 recites 'the member forms an included angle relative to the mid-longitudinal axis of the shaft of said rivet that is greater than 90 degrees.' This language would appear to require at least a portion of the flexible member to be formed at an acute angle of the longitudinal axis of the shaft.

There appears to be no support in the written description as originally disclosed for the flexible member to be formed at an acute angle to the shaft **so it is not clear how much weight to give this language.**" (February 2008 Examiner's Answer page 12, lines 1 to 10, emphasis added.)

Appellant incorporates the remarks in III.G. above showing there is support in the specification for the rejected claims. Appellant further submits that other than stating "it is not clear how much weight to give this language," the Examiner has not explained why the claims do not meet the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, Appellant respectfully requests the withdrawal of the rejection of these claims under 35 U.S.C. § 112, second paragraph.

II. Conclusion

For the foregoing reasons and the reasons set forth in the February 1, 2006 Reply Brief, September 2005 Reply Brief, and April 2005 Appeal Brief, Appellant submits that: (1) the amendment filed January 7, 2004 does not introduce new matter into the specification; (2) the specification supports the invention as now claimed; (3) the claims comply with the written description requirement under 35 U.S.C. § 112, first paragraph; (4) the claims are definite; (5) the Examiner's rejection under 35 U.S.C. § 103(a) in view of Warren has been overcome; (6) the Examiner's rejection under 35 U.S.C. § 103(a) in view of Bays and Warren has been overcome; (7) the Examiner's rejection under 35 U.S.C. § 103(a) in view of Bays and Warren, further in view of Duncan, Chisholm, or Paravano has been overcome; and (8) the Examiner's rejection

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under 35 U.S.C. § 103(a) in view of Bays, Warren, Duncan, Chisholm, or Paravano, further in view of Simons has been overcome.

Appellant submits that the claims are supported at least by the drawings. Further, Appellant submits that the Examiner's attempted redesign of the fastener of Warren and the repair tack of Bays extends beyond what either of the disclosures of Warren and Bays contemplated and would render the respective inventions inoperable for the intended purpose as taught in each of Warren and Bays. Accordingly, Appellant respectfully requests the Board to reverse all of the Examiner's objections and rejections stated in the February 2008 Examiner's Answer.

If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: April 21, 2008

By: 

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